

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OH

<p>RAYMOND S.R. KU, 17666 Stockton Chagrin Falls, OH 44023</p> <p>Plaintiff,</p> <p>vs.</p> <p>LAWRENCE E. MITCHELL, 3072 Fairmount Blvd. Cleveland Heights, OH 44118</p> <p>and</p> <p>CASE WESTERN RESERVE UNIVERSITY, c/o Elizabeth J. Keefer Adelbert Hall, Room 311 10900 Euclid Avenue Cleveland, OH 44106,</p> <p>Defendants.</p>	<p>Judge: PETER J CORRIGAN</p> <p>CV 13 815935</p> <p>FILED 2019 OCT 23 A 9 06 CLERK OF COURTS CUYAHOGA COUNTY</p>
<p><b>COMPLAINT WITH JURY DEMAND</b></p>	

**NATURE OF THE ACTION**

1. This is a civil-rights action brought under R.C. 4112.99 for violations of the Ohio Civil Rights Act, specifically R.C. 4112.02(I). In this complaint, Case Western Reserve University School of Law Professor Raymond Ku alleges that Case Western Reserve University, and Dean of the Law School Lawrence E. Mitchell, retaliated against Professor Ku for opposing Dean Mitchell's unlawful discriminatory practice of sexually harassing females in the law-school community.

## **PARTIES**

2. Plaintiff Raymond Ku is a tenured professor at Case Western Reserve University School of Law. He works in Cuyahoga County.

3. Defendant Case Western Reserve University (Case) is a university located within the boundaries of Cuyahoga County. Case is vicariously liable for the acts of its supervisory employees, including Dean Lawrence Mitchell.

4. Defendant Lawrence E. Mitchell is the Dean of Case's School of Law. He works and resides in Cuyahoga County.

## **JURISDICTION AND VENUE**

5. This Court has jurisdiction because the suit concerns state-law violations by Defendants and the amount in controversy exceeds \$25,000.

6. The Court has personal jurisdiction over Defendants.

7. Venue is proper here because all parties reside, work, and/or are located in this county, and the events at issue took place in this county.

## **FACTUAL BACKGROUND**

### **Professor Ku's Rise**

8. Professor Raymond Ku has been a tenured professor at Case School of Law since 2003. He is an intellectual-property scholar who teaches copyright, constitutional, and property law. Professor Ku has significant expertise in teaching and publishing regarding cyberspace, Internet privacy, and related areas of technology.

9. Professor Ku received his undergraduate degree from Brown University and his law degree from New York University School of Law. Before being recruited to join the Case law faculty, Professor Ku taught at the law schools at Cornell, Seton Hall, Thomas Jefferson, and St. Thomas. He clerked for Judge Timothy K. Lewis on the United States Court of Appeals for the

Third Circuit and was a litigator at Gibson, Dunn & Crutcher LLP and Levine Pierson Sullivan & Koch LLP before entering academia.

10. Professor Ku is the co-author of a popular casebook on Cyberspace Law (currently in its third edition) as well as many articles on intellectual property. A copy of his curriculum vitae is attached as Exhibit 1.

11. When Professor Ku was recruited, Case's law school was trying to build its Center for Law, Technology & the Arts. Professor Ku came in as a full, tenured professor and the associate director of the LTA Center.

12. In 2006, Professor Ku was promoted to co-director of the Center for Law, Technology & the Arts during the deanship of Gary Simson.

13. In 2008, Case created the Cyberspace Law & Policy Office. Professor Ku was appointed that office's co-director,

14. In 2009, Professor Ku was honored as Professor of the Year by the graduating class. He also received the Distinguished Teacher Award from the Case Association of Law Alumni.

15. In 2010, former Dean Robert Rawson promoted Professor Ku to Associate Dean for Academic Affairs, the second highest position in the law school.

16. In his capacity as associate dean, Professor Ku was responsible for the administration and management of the law school's curriculum of over 200 courses, approximately 50 full-time faculty members, roughly 100 adjunct faculty members, and the enforcement of the law school's academic policy for almost 600 students. He represented the administration at faculty and university committees, and at events and functions when the dean was unavailable.

17. Professor Ku is one of the most-cited professors on the Case law faculty. The Roger Williams University Law School Faculty Scholarship Study ranks the influence of law faculty at

institutions outside the U.S. News & World Report Top 50.<sup>1</sup> In 2010, the draft Roger Williams Faculty Scholarship Study inadvertently did not include Professor Ku on the list because he publishes under his full name (Raymond Shih Ray Ku) and the search parameters failed to account for authors with two middle names. After the parameters were corrected, he was not only one of the top Case faculty for that year, but Case law school jumped ten places in the study's rankings with Professor Ku's scholarship properly accounted for.

18. Professor Ku has served on various committees at Case, including the Faculty Senate Committee on Minority Affairs, which he chaired in 2011; the Promotion and Tenure Committee, which he chaired from 2008–2010; the Clinical Faculty Tenure Committee, which he chaired from 2007–2008; the Rankings Committee; the Appointments Committee, which he chaired in 2004–2005, and the Law School Diversity Committee, which he chaired in 2011.

19. The Law School Diversity Committee considers and makes recommendations to improve the diversity of students, staff, and faculty at Case. This is an important committee to the institution because the Case law school has consistently fallen short in terms of diversity, which has been a major source of contention with both American Bar Association and Association of American Law Schools accreditation. At one point, the AALS threatened Case law school's membership due to the school's lack of diversity.

20. Professor Ku served as faculty advisor to the *Internet Law Journal* from 2003–2009. Since 2009, he has served as the faculty advisor to the *Case Western Reserve Journal of Law, Technology & the Internet*.

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<sup>1</sup> The Roger Williams University Law School Faculty Scholarship Study is “an inventory of the scholarly output on top [20] law journals to assess the relative strength of the ‘non-elite’ schools in one form of scholarly research. It is the basis for the ranking of ‘Per Capita Productivity Articles in Top Journals, 1993–2012: Law School Outside the U.S. News Top 50.’” See Faculty Scholarship Study <http://law.rwu.edu/faculty/faculty-productivity-study> (last visited October 15, 2013).

**Lawrence Mitchell becomes dean.**

21. In 2011, following an extended search, Case hired Lawrence Mitchell as the law school's new dean. Dean Mitchell previously taught law at George Washington University Law School.

22. While Dean Mitchell was interviewing at the law school, Professor Ku had a good meeting with him. Professor Ku was looking forward to continuing in his role as Associate Dean for Academic Affairs under Dean Mitchell.

23. No women have joined the faculty since Lawrence Mitchell became dean of the law school, and at least two female professors and various female administrative staff have left the law school.

24. Professor Ku began to feel concerned about Dean Mitchell's approach to diversity early on in their professional relationship. From the time Dean Mitchell became dean, he made comments to Professor Ku regarding his Chinese heritage. Upon learning that Professor Ku was about to convert to Judaism, Dean Mitchell remarked that now Professor Ku was in two of Dean Mitchell's favorite groups, Asian and Jewish. Dean Mitchell asked Professor Ku about being circumcised. Dean Mitchell's inappropriate comments made Professor Ku uncomfortable. Still, Professor Ku kept an open mind about the dean.

**Professor Ku witnesses Dean Mitchell caress a married female colleague at an off-campus gathering.**

25. On or about August 28, 2011, Dean Mitchell hosted an event for faculty and staff of the law school at his new home in Cleveland Heights. Spouses and significant others were included in this event. Professor Ku, as the Associate Dean for Academic Affairs, made it a point to arrive early. Professor Ku and his wife were chatting with Dean Mitchell, discussing Professor Ku's conversion, when Dean Mitchell—in front of Professor Ku's wife—again raised the issue of Professor Ku being circumcised. Dean Mitchell's inappropriate comments made Professor Ku

and his wife uncomfortable. This was not the last inappropriate comment that Dean Mitchell would make that evening.

26. Dean Mitchell consumed numerous alcoholic beverages during the party on August 28, 2011.

27. As the party was winding down, Professor Ku and his wife were waiting to say their goodbyes to their host. As they waited, Professor Ku observed Dean Mitchell run his hand up the back of **Administrative Staff Member 1**,<sup>2</sup> an assistant dean at the law school.

**Administrative Staff Member 1**'s back was somewhat exposed because she was wearing a summer dress. Both Professor Ku and his wife witnessed this inappropriate physical contact—which is best described as a caress of his colleague's exposed skin—and found it to be sexually inappropriate as well as unnerving and creepy.

**Professor Ku learns that Dean Mitchell made inappropriate,  
sexually flirtatious comments to at least two other faculty  
members at the party on August 28.**

28. A few days after the party, Professor Ku had a conversation with **Professor 1** (one of the other associate deans) and **Professor 2**, both female professors at the law school. They were discussing an ongoing search for a new faculty member and Dean Mitchell's expressed preference for a particular white-male candidate. **Professor 1** (who has since departed Case to serve on another law faculty) was, at the time, on the Appointments Committee and reported discussing with Dean Mitchell the need to include other candidates, including women and people of color. During this conversation about diversity, Professor Ku raised what he witnessed with Dean Mitchell and **Administrative Staff Member 1** at the party. In response, one of the

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<sup>2</sup> To protect the victims of Dean Mitchell's harassment from retaliation and embarrassment for as long as possible, Professor Ku will refer to them by position in this Complaint. He will make their names available in discovery subject, if necessary, to an appropriate protective order.

women told Professor Ku about Dean Mitchell saying something inappropriate to **Professor 3** at the party. One of the women also shared with Professor Ku that two women on the legal-writing faculty, **Professor 4** and **Professor 5**, had experienced discrimination/harassment issues with Dean Mitchell.

29. **Professor 3** herself later confirmed to Professor Ku that at the August 28 party, Dean Mitchell had said something to her and her husband about Dean Mitchell stealing her away from her husband. **Professor 3** reported to Professor Ku that this sexual flirting upset her husband. Given the inappropriate comments Dean Mitchell made to her, **Professor 3** expressed concern about how he would treat female candidates for the faculty.

30. As Associate Dean for Academic Affairs, and as a human being, Professor Ku was concerned about what he had witnessed and now heard about Dean Mitchell's inappropriate behavior toward women. Professor Ku consulted with **Administrative Staff Member 2**, another assistant dean, who reported that Dean Mitchell had made similar inappropriate comments to her and her husband at the party that the dean had made to **Professor 3**.

31. **Administrative Staff Member 2**, who was on the search committee for the new dean, informed Professor Ku that the committee had concerns with Dean Mitchell during the search process relating to the number of wives he had had, his dating of students while at George Washington, and his interactions with women generally. Specifically, according to **Administrative Staff Member 2**, the search committee was aware that (1) while Dean Mitchell was a professor at George Washington, he divorced his wife to marry a student; (2) he then divorced the student; (3) he then married a woman who joined the law faculty; and (4) they divorced after adopting a child.

**Professor Ku realizes Case's sexual-harassment policy requires  
him to report Dean Mitchell sexual harassment.**

32. In discussing these concerns about Dean Mitchell's behavior toward women, and mindful of their obligations to the university and their students, Professor Ku and **Administrative Staff Member 2** reviewed the university's sexual-harassment policy, including its mandatory reporting requirement: "*All members of the university community must adhere to the sexual harassment policy and report violations of the policy.*"<sup>3</sup> Though she agreed that the reporting requirement was not discretionary, **Administrative Staff Member 2** expressed fear about losing her job if she reported Dean Mitchell's conduct.

33. Professor Ku likewise understood that the policy obligated him to raise these concerns about Dean Mitchell's treatment of women in the law-school community, but as a tenured professor he was not in the more precarious position that **Administrative Staff Member 2** faced in terms of job security. They discussed the risk of retaliation, but Professor Ku, faced with various concerns including: (1) the inappropriate physical contact to which Dean Mitchell had subjected **Administrative Staff Member 1**; (2) the inappropriate comments to **Professor 3** and **Administrative Staff Member 2**; and (3) the concerns about Dean Mitchell's treatment of two female members of the legal-writing faculty (**Professor 4** and **Professor 5**), Professor Ku felt that he had no choice but to report the conduct under the sexual-harassment policy. He also felt that, as Associate Dean for Academic Affairs, it was in the female student body's interest that he report Dean Mitchell's sexually harassing conduct. The school year had just started. Professor Ku was concerned for the university and the law school because it would be a huge scandal if Dean Mitchell was discovered to be harassing not just faculty and staff but also the law students

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<sup>3</sup> Emphasis added. A copy of the Case Western Reserve University Sexual Harassment Policy is attached as Exhibit 2.



who pay over \$45,000 in annual tuition for the privilege of attending Case Western Reserve University School of Law.

**Professor Ku meets with Provost “Bud” Baeslack to discuss Dean Mitchell’s sexual harassment—and Baeslack passes the buck back to Ku to raise the concerns directly with Mitchell.**

34. Having reached the conclusion that Case’s sexual-harassment policy mandated that he report Dean Mitchell’s behavior, Professor Ku, with the help of his assistant, attempted to meet with Dean Mitchell as well as with Provost and Executive Vice President W.A. “Bud” Baeslack III, the second-highest-ranking university official and Dean Mitchell’s immediate supervisor. It was just before the Labor Day holiday, and Dean Mitchell apparently had departed campus for the weekend and would not return until the following Tuesday. Professor Ku had intended, as a courtesy, to notify Dean Mitchell that he (Ku) was going to make the report required under the policy, but Dean Mitchell’s absence from campus precluded that.

35. Professor Ku was able to arrange a meeting with Provost Baeslack on or about Thursday, September 1, 2011. Provost Baeslack is the administrator who is most directly in charge of Dean Mitchell and the law school. Professor Ku met with Provost Baeslack and reported what he (Ku) had witnessed and heard about Dean Mitchell’s inappropriate and sexually harassing behavior toward women at Case. Professor Ku described the concerning conduct but did not share the victims’ names out of concern for their privacy and potential retaliation against them for reporting Dean Mitchell’s harassing conduct. Provost Baeslack stated that he had already had to address an issue with Dean Mitchell about him using profanity at university events. But during the meeting, it became clear to Professor Ku that Provost Baeslack was not going to address with Dean Mitchell the issue of him sexually harassing women at the law school. Provost Baeslack communicated to Professor Ku that *he* (Professor Ku) should address the sexual harassment with Dean Mitchell and report back to Provost Baeslack on how it went. Provost Baeslack put

Professor Ku (Dean Mitchell's subordinate) in the position of addressing Dean Mitchell's sexually harassing behavior with him.

**Professor Ku follows Provost Baeslack's instruction and meets with Dean Mitchell to discuss the sexual-harassment concerns—and Mitchell berates Ku as having “betrayed” Mitchell and all but threatens to terminate Ku's associate deanship.**

36. Following Provost Baeslack's instructions, Professor Ku met with Dean Mitchell on or about Tuesday, September 6, 2011 (after the Labor Day holiday). The meeting had been previously scheduled to attend to regular law-school business and Professor Ku intended to raise the sexual-harassment issues at the end of the meeting. But from the moment the meeting began, Professor Ku could tell that something was wrong. At the outset, Dean Mitchell was defensive in his tone of voice and body language. After they concluded their agenda items, Dean Mitchell asked, “What else do you want to talk about?” or words to that effect. Professor Ku believes that someone tipped off Dean Mitchell that Professor Ku would be addressing the issue of Dean Mitchell's sexual harassment.

37. Professor Ku raised the issue of Dean Mitchell's sexual harassment as diplomatically as humanly possible. Professor Ku explained his concerns to Dean Mitchell about him subjecting faculty and administrative staff to behavior that violated the sexual-harassment policy.

38. *Dean Mitchell never denied engaging in the inappropriate conduct.* Instead, Dean Mitchell expressed shock and disbelief that the affected individuals would not feel comfortable raising these issues with him personally, or that anyone would feel he would be angry or retaliate. Dean Mitchell then spent the rest of the meeting berating Professor Ku for reporting his concerns to Provost Baeslack.

39. Dean Mitchell accused Professor Ku of being “disloyal” and breaching Dean Mitchell's trust by reporting his behavior to Provost Baeslack. Dean Mitchell stated that he viewed

Professor Ku's reporting as a "betrayal" and a "breach of trust" and questioned whether Ku could continue to work as associate dean.

40. Dean Mitchell stated that if Professor Ku ever did anything similar again (i.e., report Dean Mitchell's sexual harassment to a university administrator), Professor Ku would no longer be associate dean.

41. Dean Mitchell stated his belief that it was Professor Ku's sole duty to report directly to Dean Mitchell. Professor Ku disagreed, explaining that this was not an internal disagreement over law-school policy, and that Professor Ku's report to Provost Baeslack was motivated by Professor Ku's legal and ethical duty to the university and the law school to report allegations of sexual harassment. Dean Mitchell continued to claim that he had been "betrayed" by Professor Ku and—effectively admitting the misconduct—stated, "It's not like I raped someone." Dean Mitchell accused Professor Ku of undermining his (Mitchell's) authority and stated that this is exactly why Case Law School was "not able to get a real dean" for the last several years.<sup>4</sup> Dean Mitchell demanded that Professor Ku *apologize* for reporting his concerns to Provost Baeslack.

**Professor Ku stands up to Dean Mitchell to protect the  
university and law school; refuses to hush up Mitchell's  
misconduct as part of a "boys' club"**

42. In the face of Dean Mitchell's hostility, Professor Ku responded that he took this matter very seriously, and that this was a situation with potential violations of not only university policy but also local, state, and federal law. Professor Ku declined to apologize for following university policy and assured Dean Mitchell that if further sexual-harassment-policy violations came to his (Ku's) attention, he would not hesitate to report them per university policy. Professor Ku emphasized that university policy did not leave to Dean Mitchell's discretion reporting sexual-

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<sup>4</sup> This was an apparent reference to the distinguished stewardship of the law school by preeminent litigator Robert Rawson as interim dean while the law school was conducting a formal national search.

harassment-policy violations, but rather was mandatory. Professor Ku made it clear that this matter was not going to be hushed up by some boys' club and that the university's central administration had a right to know of these issues for the sake of the university and the law school. Professor Ku explained that he was trying to protect the institution's reputation and avoid a potential controversy.

**Dean Mitchell directs Professor Ku to apologize to the women the dean sexually harassed.**

43. Eventually, Dean Mitchell dismissed Professor Ku from the meeting stating that the "argument is going nowhere." Dean Mitchell ordered Professor Ku to convey the dean's apologies to the women who had expressed concerns (again, never denying that he had engaged in sexually harassing and inappropriate conduct with multiple women).

44. Following the meeting, Professor Ku followed Dean Mitchell's orders and conveyed his apologies to the women who had shared their concerns with him (Ku). Each expressed their doubts that Dean Mitchell would change his behavior. **Professor 3** expressed that her husband remained very concerned about Dean Mitchell's comments at the party on August 28 and did not want her to be left alone with the dean.

**Professor Ku reports back to Provost Baeslack about meeting with Dean Mitchell.**

45. After following Dean Mitchell's instructions to convey his apologies to the women who expressed concerns about his sexually harassing and inappropriate behavior, Professor Ku had a phone conversation with Provost Baeslack about the meeting with Dean Mitchell. Provost Baeslack denied reaching out to Dean Mitchell before Professor Ku met with the dean. Professor Ku reported that Dean Mitchell was very angry and had threatened to fire him for reporting the sexual-harassment concerns. Provost Baeslack stated that Dean Mitchell had contacted him (Baeslack) and was indeed quite angry. Provost Mitchell actually *defended* Dean Mitchell, claiming

that the dean's anger was "understandable" and "expected" because Professor Ku went to Provost Baeslack before clearing it with the dean. Provost Baeslack stated that he would not like it if a subordinate went over his head. While Provost Baeslack agreed that it was inappropriate to threaten to fire Professor Ku for reporting sexual harassment, Provost Baeslack never acknowledged that Professor Ku had complied with university-mandated policy by reporting the incidents, and was not supposed to go to Dean Mitchell or otherwise obtain "permission" before reporting sexual harassment. Provost Baeslack instead concluded the conversation by explaining that he hoped that the next step would be to repair the leadership team's working relationship.

**Dean Mitchell initiates a campaign of retaliation against Professor Ku  
and pressures him to step down as associate dean.**

46. Following Professor Ku's report of Dean Mitchell's sexually harassing behavior and declining to apologize for doing so, Dean Mitchell began a campaign of retaliation against Professor Ku.

47. Dean Mitchell tried to discredit Professor Ku amongst the faculty and had meetings targeting Professor Ku.

48. Dean Mitchell enlisted assistance to monitor Professor Ku's blog posts.

49. Professor Ku first became aware of the retaliation at a meeting amongst Professor Ku, Dean Mitchell, and Provost Baeslack on or about September 8, 2011 (two days after the meeting between Dean Mitchell and Professor Ku where Ku first raised the harassment concerns). Dean Mitchell began the meeting by asking if Professor Ku was willing to apologize for reporting the sexual harassment and admit he was wrong. Professor Ku again declined to apologize for following university policy and the law, and for seeking to protect the institution, faculty, staff, and students. Dean Mitchell proceeded to chastise Professor Ku in front of Provost Baeslack. Dean Mitchell berated Professor Ku for being "disloyal," "betraying" Dean Mitchell, and

violating his “trust.” Dean Mitchell asked Professor Ku to consider whether he should continue in his role as associate dean. Provost Baeslack did nothing to correct Dean Mitchell’s behavior or otherwise intervene.

50. Professor Ku again explained the seriousness with which he took the concerns shared with him by faculty and staff about Dean Mitchell’s behavior toward women and their ongoing fear that Dean Mitchell’s behavior might negatively impact female faculty candidates, students, and even donors. Professor Ku explained that—in his reading of the sexual-harassment policy—complaints about harassment need not rise to the level of rape (as Dean Mitchell had previously suggested) for the school to respond promptly or to trigger the mandatory reporting requirement. Professor Ku expressed how his actions were taken to maintain confidentiality and resolve the matter in the most amicable way possible to minimize and avoid negative publicity.

51. Dean Mitchell continued to emphasize that associate dean’s role required “absolute loyalty” to the dean. Professor Ku countered that, although the associate dean should maintain public unity with the dean on matters of law-school policy, it was not Professor Ku’s job to keep Dean Mitchell’s secrets.

52. Dean Mitchell advised Professor Ku to take a few days to consider whether he should continue as associate dean. Professor Ku responded that Dean Mitchell should consider the consequences for retaliating against an employee who opposed discrimination.

53. Notwithstanding Professor Ku’s explanation and adherence to the sexual-harassment policy, Provost Baeslack sided with Dean Mitchell, never once acknowledging that Professor Ku was required by the school’s own policy to report the misconduct. Provost Baeslack instead emphasized that the dean and associate dean had to have a good working relationship. Provost Baeslack again noted that Dean Mitchell’s anger was understandable, and that he (Baeslack) would be angry and upset under similar circumstances. Provost Baeslack said Professor Ku

“should have moved heaven and earth” to speak to Dean Mitchell before speaking to the provost. Professor Ku emphasized that he took no pleasure in having raised these concerns with Provost Baeslack and that he (Ku) was in an extremely difficult position. Dean Mitchell retorted: “Now you know how I have felt because you spoke to the provost.”

54. Despite Provost Baeslack’s lack of support in the face of Dean Mitchell’s retaliation for Professor Ku’s reporting the sexual-harassment concerns as required by university policy, Professor Ku was emphatic that he wished to remain in his role as associate dean.

55. Dean Mitchell then insisted that Professor Ku be in the building five days per week (which had never before been a requirement of the position). Professor Ku reminded Dean Mitchell that he (Ku) was teaching an overload of courses in addition to his administrative responsibilities and that he worked from home one day per week to pursue his scholarly agenda. As for many law professors, Professor Ku finds time outside the office conducive to writing because it allows him to focus without interruption. This was especially true in his role as associate dean when—given the breadth and depth of his responsibilities—he would regularly have to deal with last-minute appointments, telephone calls, or crises. But despite Professor Ku—one of the most-cited scholars at the law school—explaining how this new requirement would hurt his writing, Dean Mitchell persisted in imposing this new requirement at the expense of Professor Ku’s scholarship.

56. Dean Mitchell also ordered Professor Ku to submit a report about his plans for the office of associate dean. Provost Baeslack admitted that this was unnecessary “homework” but did not discourage or dissuade Dean Mitchell from demanding it. Provost Baeslack also commented that Professor Ku must be feeling like he was on the hot seat. The meeting adjourned with the understanding that Professor Ku would complete this unnecessary busywork and discuss it with Dean Mitchell over lunch.

57. After the meeting amongst Professor Ku, Provost Baeslack, and Dean Mitchell, Dean Mitchell never communicated with Professor Ku face to face. And Dean Mitchell proceeded to do nearly everything that one can do to a tenured professor to retaliate against him for reporting Dean Mitchell's sexual harassment. From that point forward, Dean Mitchell excluded Professor Ku from involvement in matters in which, as associate dean, Professor Ku would customarily be involved.

58. On or about September 9, 2011, Dean Mitchell reassigned responsibility for three new tasks to Professor Ku. These tasks were a teaching interest group, Case Downtown, and the North East Ohio Faculty Colloquium. These responsibilities had, until then, fallen under the auspices of another associate dean, who at the time was **Professor 1**. **Professor 1** discouraged Dean Mitchell from reassigning these tasks to Professor Ku because she was concerned that he would be overloaded. But Dean Mitchell ignored her.

**University Vice President Mobley acknowledges that Professor Ku  
is the victim of “a classic case of retaliation.”**

59. After the berating he received from Dean Mitchell in front of Provost Baeslack on September 8 and the reassignment of various tasks from **Professor 1** to Professor Ku, on or about Friday, September 9, 2011, Professor Ku met with Marilyn Mobley, the University's Vice President of the Office of Inclusion, Diversity & Equal Opportunity. The meeting was in person at her office. Professor Ku reported Dean Mitchell's retaliation and explained what had happened during the meeting with Dean Mitchell and Provost Baeslack.

60. Dr. Mobley responded that this was “a classic case of retaliation.” Dr. Mobley told Professor Ku that she was going to bring Dean Mitchell's retaliation to University President Barbara Snyder's attention right away. Dr. Mobley then brought Faculty Diversity Officer John Clochesy into the meeting. Professor Ku shared all the same details again with Dr. Clochesy. Dr.



Clochesy expressed the same opinion as Mobley, that this was clear case of retaliation. Both Dr. Mobley and Dr. Clochesy agreed that Professor Ku should file a formal complaint for retaliation based on Dean Mitchell's conduct in response to Professor Ku reporting Dean Mitchell's sexual harassment. It was late Friday afternoon, so they arranged to meet again on Monday to complete the formal complaint. As the meeting concluded, Dr. Mobley stated that she was going right over to see President Snyder to report what Professor Ku had reported about the retaliation he was facing. Dr. Mobley later confirmed with Professor Ku that she had done this.

### **Provost Baeslack "just doesn't get it"**

61. On or about September 12, 2011, Professor Ku met with Dr. Clochesy as arranged the previous Friday. Dr. Clochesy recorded the details of Professor Ku's formal retaliation complaint. During this meeting, Dr. Clochesy stated to Professor Ku that Provost Baeslack just "didn't get it" when it came to sexual harassment. Dr. Clochesy shared with Professor Ku the story of a sexual-harassment issue related to a student in a study-abroad program and how the issue's significance and the urgency of action had to be explained to Provost Baeslack. Dr. Clochesy advised Professor Ku that the women (whose privacy Professor Ku was still protecting) should be made aware that they could report the harassment confidentially through a hotline.

### **Women fear retaliation**

62. Later that day, Professor Ku, complying with Dr. Clochesy's instruction, spoke with ***Administrative Staff Member 2***. He told her that he had filed a formal complaint for retaliation, and that the university administration was going to begin an investigation. She stated that she might have to quit her job because she did not want to be forced into a position in which she would have to lie about Dean Mitchell's behavior to keep her job.

63. That same day or shortly thereafter, Professor Ku also spoke to ***Professor 1, Professor 2, and Professor 3*** and shared what Dr. Clochesy had asked Professor Ku to tell them about the anonymous hotline's availability.

**Dean Mitchell never discusses the busywork assignment with Professor Ku.**

64. On or about September 14, 2011, Dean Mitchell informed Professor Ku's assistant that their scheduled lunch (where they were supposed to discuss the busywork report Mitchell had assigned Ku) had been changed to a meeting. Later that day, Dean Mitchell—again through Professor Ku's assistant—canceled the meeting. Dean Mitchell made no effort to reschedule and never discussed with Professor Ku the unnecessary homework that Professor Ku needlessly completed.

**After initially acknowledging that Dean Mitchell's conduct was "a classic case of retaliation," university administrators attempt to sweep under the rug the harassment and retaliation.**

65. On or about September 15, 2011, Professor Ku again met with the Dr. Mobley and Dr. Clochesy. Their attitude toward Professor Ku had changed markedly. Before, just days earlier, they had been supportive and sympathetic to Professor Ku's predicament in reporting Dean Mitchell's sexual harassment under a mandatory policy and being retaliated against in return. These officials had agreed that Professor Ku was experiencing "classic retaliation." But now Dr. Mobley and Dr. Clochesy accused Professor Ku of attempting to "collect statements" about Dean Mitchell's sexual harassment. Professor Ku explained that he had just followed Dr. Clochesy's instruction to tell the women they could call the anonymous hotline. Professor Ku had not attempted to collect any statements.

66. On or about September 19, 2011, Professor Ku again met with Dr. Mobley and Dr. Clochesy. Dr. Mobley and Dr. Clochesy again accused Professor Ku of trying to "collect statements" about Dean Mitchell's sexual harassment. Professor Ku again assured them that he

was not trying to investigate, but had simply—per Dr. Clochesy’s instruction—conveyed to the harassment victims with whom he had spoken their option to anonymously report Dean Mitchell’s sexual harassment of them.

67. Based on their recent meetings, Professor Ku was getting the sense that Dr. Mobley and Dr. Clochesy were perhaps focusing only on the harassment issues, and ignoring the retaliation against him. Concerned that his report of retaliation was now not being taken seriously, on or about Friday, September 28, 2011, Professor Ku sent a letter to Dr. Mobley about his concerns about retaliation by Dean Mitchell.

68. On or about September 29, 2011, Dr. Mobley sent Professor Ku an email to follow up on their meeting on September 19. In the email, Dr. Mobley acknowledged that Professor Ku had raised “concerns [he] indicated were expressed about interactions between Dean Lawrence Mitchell and certain members of the Law School faculty and staff at a recent gathering” and that those concern “may fall under the University’s Sexual Harassment Policy.” She claimed that her office’s inquiry into the matter was complete.

**Professor Ku raises concerns about being excluded from consideration for a newly endowed chair in retaliation for reporting Dean Mitchell’s sexual harassment, but again is rebuffed by university administrators.**

69. On or about October 7, 2011, Professor Ku again met with Dr. Mobley and Dr. Clochesy. At this meeting, Professor Ku shared his concerns about the treatment of women and minorities at the law school regarding a newly endowed chair for a faculty member teaching intellectual property (the Spangenberg Family Foundation Chair in Law and the Arts). Professor Ku noted that he was qualified for the position, but Dean Mitchell refused to consider internal candidates. *Professor I* had nominated Professor Ku for consideration for this chair, but was informed by the Appointments Committee chairperson that Dean Mitchell was not allowing the

committee to consider internal candidates. Upon information and belief, this was the first time that internal candidates were excluded from consideration for a law-school endowed chair.

70. On or about October 24, 2011, Dr. Clochesy dismissed Professor Ku's concerns about the Spangenberg chair, claiming that the Dean had discretion to use the chairs as he saw fit.

**After initially acknowledging that Professor Ku was experiencing "a classic case of retaliation," Dr. Mobley's supposed "investigation" concludes that there was no retaliation against Professor Ku for reporting Dean Mitchell's sexual harassment of females in the law-school community. And Professor Ku reluctantly resigns his position as associate dean.**

71. On or about Monday, October 31, 2011, Dr. Mobley reported to Professor Ku that she had conducted an investigation and claimed that she had concluded that Professor Ku's concerns about being retaliated against were "unsubstantiated."

72. On or about November 1, 2011, Professor Ku reluctantly tendered his resignation as Associate Dean for Academic Affairs and chair of the Law School Diversity Committee. He was constructively discharged from those positions based on Dean Mitchell's retaliation and the university administrators' respective failures to intervene or prevent the retaliation. As Professor Ku stated in his letter of resignation addressed to Dean Mitchell: "because you have effectively ended all of my substantive authority in these positions and removed me from all substantive decision making after I reported concerns about your potentially discriminatory behavior regarding women at the law school, I can no longer reasonably remain in these positions or serve in your administration."

73. Before the end of Professor Ku's time as Associate Dean for Academic Affairs, it had been the custom and practice at the law school for former associate deans to retain an increased salary following their service in that role. But Professor Ku's salary was reduced after he ceased serving as associate dean.

74. Case, and specifically Provost Baeslack, Dr. Mobley, and Dr. Clochesy, failed to take any corrective action after Professor Ku complained of Dean Mitchell's retaliation.

**Professor Ku was not the only one who complained to  
Provost Baeslack about Dean Mitchell's retaliation.**

75. On or about December 11, 2011, *Administrative Staff Member 3* complained in a letter to Provost Baeslack that Dean Mitchell had engaged in sexual relations with *Law Student 1* and was engaging in retaliation against *Administrative Staff Member 3* based on his knowledge of Dean Mitchell's improprieties. *Administrative Staff Member 3* expressed that this improper conduct was part of "a pattern of unprofessional behavior."

76. *Administrative Staff Member 3* went on to note that, "my close knowledge of Dean Mitchell's past and potential behavior causes me to have great concern for the integrity and reputation of the Case Western Reserve University Law School and for the safety of the students and staff." He also stated, "I have come to fear for my personal safety."

77. Case's sexual-harassment policy provides: "When one party has any professional responsibility for another's academic or job performance or professional future, the university considers sexual relationships between the two individuals to be a basic violation of professional ethics and responsibility...Because of the asymmetry of these relationships, 'consent' may be difficult to assess, may be deemed not possible, and may be construed as coercive."

78. The dean of the Case law school has professional responsibility for the professional future of each law student enrolled there.

79. Per Case's sexual-harassment policy, for Dean Mitchell to engage in sexual relations with a law student was a basic violation of professional ethics and responsibility.

80. After raising Dean Mitchell's sexual relationship with *Law Student 1* with Provost Baeslack, *Administrative Staff Member 3* met with Dr. Mobley and Carolyn Gregory, Vice President for Human Resources, and shared these concerns with them.

81. Following the holiday break, *Administrative Staff Member 3* was briefly reassigned outside the law school to the office of Carolyn Gregory herself—and then suddenly, days later, told that he was “laid off for budgetary reasons.”

**At a City Club Event, Case law students pass out a flier questioning Dean Mitchell's sexual behavior and attitudes towards women.**

82. On or about January 17, 2012, the City Club of Cleveland held an event: “The Future of Legal Education: Responses from Northern Ohio's Law School Deans.” The deans from the University of Akron School of Law, Cleveland-Marshall College of Law, and University of Toledo College of Law attended, along with Dean Mitchell.

83. During the event, one or more individuals believed to be affiliated with Case passed out the flyer attached as Exhibit 3, which posed, among others, the following questions:

- a. “Dean Mitchell[,] about half of all law students today are female. What should female law students expect from a dean who, in his short time in Cleveland, has already had affairs with a Case graduate student, a recent Case law grad, a local lawyer, and the girlfriend of [y]our personal assistant?”
- b. “Dean Mitchell, what does it say about your attitude toward female students that you joked to Case faculty members that the Case graduate student you were having an affair with, ‘wasn't good for anything but keeping the bed warm?’”
- c. “Dean Mitchell, why [i]s a man who doesn't care about legal education and who regards women as objects of [exploitation of the] dean of the law school?”

84. Upon information and belief, one or more Case administrators became aware of the flyer and its contents during or shortly after the Meet the Deans event at the City Club.

**Case's chief litigation counsel gives a presentation to the law school faculty and staff about the sexual-harassment policy and non-retaliation.**

85. After the Meet the Deans event at the City Club, during about the spring semester in 2012, Peter M. Poulos, Chief Litigation Counsel and Chief Risk Management Officer in Case's Office of General Counsel, made a presentation to law-school faculty and senior staff about the Case anti-sexual-harassment and anti-retaliation policies. Poulos expounded on the policy's mandatory reporting requirement, emphasizing that faculty and staff do not have the discretion to judge whether conduct definitively violates the policy or, and as a result are required to report questionable conduct. Poulos also emphasized the university's non-retaliation policy. Poulos exhorted those in attendance to follow the mandatory-reporting requirement. Both Dean Mitchell and Professor Ku attended this presentation.

**The retaliation resumes after Professor Ku returns from sabbatical.**

86. Professor Ku was on sabbatical for 2012–13 academic year.

87. On or about June 13, 2013, Professor Ku received his contract for the then-upcoming academic year, beginning the fall of 2013. His stipend for co-directorship of the Center for Law, Technology & the Arts was missing. And his pay increase was much lower than the customary rate increases over his previous decade as a Case law professor.

88. On or about June 14, 2013, Professor Ku sent an email to Dean Mitchell stating that there had been a mistake, and that Professor Ku's new contract did not include reference to his co-directorship of the Center for Law, Technology & the Arts. Dean Mitchell responded that there was no mistake: Dean Mitchell had decided not to reappoint Professor Ku as co-director of the Center for Law, Technology & the Arts. Dean Mitchell provided no explanation for taking

away a leadership role that Professor Ku had played in one form or another since joining the law school ten years earlier, indeed, which he had been hired and came to Case to assume.

89. On or about July 13, 2013, the new Associate Dean for Academic Affairs, on Dean Mitchell's behalf, assigned Professor Ku to teach an additional seminar over and above his customary course load. The new course required new preparation and significant teaching time for which Professor Ku was not compensated. The previous practice for staffing these seminars was to ask for volunteers. But after Professor Ku reported Dean Mitchell's sexual harassment, Dean Mitchell unilaterally assigned Professor Ku to teach one of these seminars.

**COUNT 1**  
**RETALIATION UNDER OHIO R.C. 4112.02(I) AND 4112.99**

90. Plaintiff Ku incorporates all previous allegations.

91. Under Ohio law including R.C. 4112.02(I), it is an unlawful employment practice to discriminate in any manner (i.e., retaliate) against any person because s/he opposed an unlawful discriminatory practice.

92. Under Ohio law including R.C. 4112.99, whomever violates the above-described legal obligation is subject to a civil action for damages, injunctive relief, or any other appropriate relief.

93. Defendants intentionally and maliciously discriminated and retaliated against Professor Ku after he opposed an unlawful discriminatory practice, i.e., Dean Mitchell's sexual harassment of females in the law-school community.

94. Dean Mitchell retaliated against Professor Ku in numerous ways including, but not limited to, the following:

- a. Dean Mitchell threatened to fire Professor Ku;
- b. Dean Mitchell suggested that Professor Ku should not continue as Associate Dean for Academic Affairs;



- c. Dean Mitchell ceased all face-to-face communication with Professor Ku and only communicated with him through staff, email, or memo;
- d. Dean Mitchell froze out Professor Ku from all substantive discussions and decision-making regarding the law school that traditionally were the responsibilities of the Associate Dean for Academic Affairs such as new course offerings and staffing those courses;
- e. Dean Mitchell stripped Professor Ku of his substantive responsibilities as Associate Dean including consultation and direct decision making for the law school;
- f. Dean Mitchell required Professor Ku to be in the building five days per week—which had never before been a requirement of that position—and made more difficult Professor Ku’s ability to perform academic work without distraction or interruption;
- g. Dean Mitchell required Professor Ku to complete busywork such as submitting a report about his plans for his position as associate dean, which Dean Mitchell never discussed with him (Ku);
- h. Dean Mitchell excluded Professor Ku from the Breakfast with the Deans meeting (a get-to-know-you event that an associate dean would be expected to attend) never notifying Professor Ku of the event;
- i. Dean Mitchell denied Professor Ku the opportunity to be considered for the endowed professorship known as the Spangenberg Family Foundation Chair in Law and the Arts, and any resulting increase in compensation;
- j. Dean Mitchell heaped additional duties on Professor Ku that had previously been the responsibility of another associate dean despite that associate dean’s

(**Professor I**'s) discouragement from doing so due to Professor Ku's current workload;

- k. Dean Mitchell constructively discharged Professor Ku from the post of Associate Dean for Academic Affairs;
- l. Dean Mitchell stripped Professor Ku of the additional financial compensation associated with being the Associate Dean for Academic Affairs;
- m. Dean Mitchell effectively denied Professor Ku the additional financial compensation customarily associated with being a former Associate Dean for Academic Affairs; and
- n. Dean Mitchell stripped Professor Ku of his co-directorship of the Center for Law, Technology & the Arts and the additional financial compensation associated with that post;
- o. Dean Mitchell awarded Professor Ku a negligible pay increase not in line with his customary increases during his decade of service at the Case law school; and
- p. Dean Mitchell required Professor Ku to teach an increased course load without additional compensation.

95. In short, in retaliation for Professor Ku reporting Dean Mitchell's sexual harassment, Dean Mitchell did to Professor Ku nearly everything that can be done to a tenured professor.

96. Dean Mitchell's retaliation changed the terms and conditions of Professor Ku's employment and subjected him to adverse employment actions.

97. Defendant Case is vicariously liable for Defendant Mitchell's acts toward Professor Ku.

98. As a direct and proximate result of Defendants' unlawful conduct, Professor Ku has suffered and will continue to suffer economic and non-economic damages for which Defendants

are liable jointly and severally liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.

**COUNT 2**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

99. Plaintiff Ku incorporates all previous allegations.

100. In conducting himself as he did, Dean Mitchell either intended to cause emotional distress or knew or should have known that the actions taken would result in serious emotional distress to Professor Ku.

101. Dean Mitchell's conduct in haranguing Professor Ku for reporting the Dean's sexually harassing behavior and retaliating against Professor Ku for reporting that misbehavior is Dean's was extreme and outrageous. For an Ivy-League-educated attorney to engage in such conduct is shocking. Dean Mitchell's behavior went beyond all possible bounds of decency and was such that it could be considered intolerable in civilized society.

102. As a direct and proximate result of Dean Mitchell's unlawful conduct, Professor Ku suffered and will continue to suffer mental anguish so serious and of a nature that no reasonable man could be expected to endure it and for which Dean Mitchell is liable.

103. Professor Ku is entitled to punitive damages based on Dean Mitchell's egregious conduct.

**PRAYER FOR RELIEF**

For the reasons stated above, Plaintiff respectfully requests the following relief from the Court.

- A. Declare that Defendants' acts and conduct constitute violations of Ohio law;
- B. Enjoin Defendants from further retaliating against Professor Ku and from further implementation of any previous acts of retaliation;
- C. Enter judgment in Professor Ku's favor as to all claims for relief;
- D. Award Professor Ku full compensatory damages, economic and non-economic, including, but not limited to, damages for pain and suffering, mental anguish,

emotional distress, humiliation, and inconvenience that Professor Ku has suffered and is reasonably certain to suffer in the future.

- E. Award Professor Ku punitive damages for Defendants' intentional and malicious violation of Ohio law;
- F. Award pre-judgment and post-judgment interest at the highest lawful rate;
- G. Award Professor Ku his reasonable attorneys' fees (including expert fees) and all other costs of this suit;
- H. Award all other relief in law or equity to which Professor Ku is entitled and that the Court deems equitable, just, or proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues within this Complaint.

Dated: October 23, 2013

Respectfully submitted,

THE CHANDRA LAW FIRM, LLC



Subodh Chandra (0069233)

Ashlie Case Sletvold (0079477)

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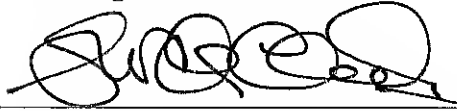
Ashlie.Sletvold@chandraLaw.com

*Attorneys for Plaintiff Professor Raymond Ku*

## REQUEST FOR SERVICE

TO THE CLERK:

Please issue the Summons and Complaint and serve the Complaint by certified mail to Defendants listed in the Complaint's caption at the addresses listed above, making return according to law.

A handwritten signature in black ink, appearing to be "S. S. S.", written over a horizontal line.

*One of the attorneys for Plaintiff Professor Raymond Ku*



# Raymond Shih Ray Ku

11075 East Boulevard • Cleveland, OH 44106 • (216) 368-3963 • raymond.ku@case.edu

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**CURRENT APPOINTMENT** **CASE WESTERN RESERVE UNIVERSITY SCHOOL OF LAW, Cleveland, OH** 2003 to present  
Professor of Law, Teach classes in Constitutional, Copyright, and Property law. Additional courses and areas of expertise include: Cyberspace/Internet, Privacy, and Mass Media law.

Associate Dean for Academic Affairs 2010 to 2011  
Responsible for the administration and management of the law school's curriculum of over 200 courses, approximately 50 full-time faculty members, roughly 100 adjunct faculty members, and the enforcement of law school's academic policy for almost 600 students. Represented the administration at faculty and University committees as well as at events and functions when the Dean is unavailable.

*Co-Director*, Center for Law, Technology & the Arts 2006 to 2013  
*Co-Director*, Cyberspace Law & Policy Office 2008 to 2013  
*Associate Director*, Center for Law, Technology & the Arts 2003 to 2006

**AWARDS** *Professor of the Year* 2009  
*CWRU Law Alumni Association Distinguished Teacher* 2009  
*CWRU Baker-Nord Seminar Fellow* 2006

**BOOKS**

- CYBERSPACE LAW: Cases & Materials (4th Ed. Aspen forthcoming 2015) (with J. Lipton)
- CYBERSPACE LAW: Cases & Materials (3d Ed. Aspen 2010) (with J. Lipton)
- Teacher's Manual CYBERSPACE LAW: Cases & Materials (3d Ed. Aspen 2007) (with J. Lipton)
- CYBERSPACE LAW: Cases & Materials (2d Ed. Aspen 2006) (with J. Lipton)
- Teacher's Manual CYBERSPACE LAW: Cases & Materials (2d Ed. Aspen 2007) (with J. Lipton)
- CYBERSPACE LAW: Cases & Materials (Aspen 2002) (with M. Farber & A. Cockfield)
- Teacher's Manual CYBERSPACE LAW: Cases & Materials (Aspen 2002)

**ARTICLES**

- *Does Copyright Law Promote Creativity? An Empirical Analysis of Copyright's Bounty*, 63 VAND. L. REV. 1669 (2009) (with J. Sung & Y. Fan)
- *F(r)ee Expression: Reconciling Copyright & the First Amendment*, 57 CASE W. RES. L. REV. 863 (2007)  
*Reprinted in* COPYRIGHT: ISSUES AND CHALLENGES (Amicus Books 2008)
- *Grokking Grokster*, 2005 WIS. L. REV. 1217
- *Consumer Copying & Creative Destruction: Fair Use Beyond Market Failure*, 18 BERK. TECH. L. J. 539 (2003) (invited)
- *The Founders' Privacy: The Fourth Amendment and The Power of Technological Surveillance*, 86 MIN. L. REV. 1325 (2002) (invited)
- *The Creative Destruction of Copyright: Napster & the New Economics of Digital Technology*, 69 U. CHI. L. REV. 263 (2002)  
*Reprinted in* COPYRIGHT LAW: COPYRIGHT IN THE 21<sup>ST</sup> CENTURY (Ashgate 2011)

- *Irreconcilable Differences: Congressional Treatment of Internet Service Providers as Speakers*, 3 VAND. ENT. LAW & PRAC. J. 70 (2001) (invited)
- *Open Internet Access & Freedom of Speech: A First Amendment Catch-22*, 75 TUL. L. REV. 87 (2000)  
     *Reprinted in* FIRST AMENDMENT LAW HANDBOOK 2001-2002 (West Group)  
     *Appeared in* STANFORD TECHNOLOGY LAW REVIEW (Working Paper Series 2000)
- *Antitrust Immunity, the First Amendment & Settlements: Defining the Boundaries of the Right to Petition*, 33 IND. L. REV. 385 (2000)  
     *Reprinted in* FREEDOM OF ASSEMBLY AND PETITION: THE FIRST AMENDMENT, ITS CONSTITUTIONAL HISTORY AND THE CONTEMPORARY DEBATE (Prometheus Books 2010).
- *Swingers: Morality Legislation & The Limits of State Police Power*, 12 ST. THOMAS L. REV. 1 (1999) (invited)
- *Consensus of the Governed: The Legitimacy of Constitutional Change*, 64 FORDHAM L. REV. 535 (1995)
- *EQUALITY OF EDUCATIONAL OPPORTUNITY & DISTRIBUTIVE JUSTICE: A Case Study of Equal Protection and School Financing* (1988) (unpublished A.B. honors thesis, Brown University) awarded the Philo Sherman Bennet Prize (best thesis discussing the principles of free government)

## ESSAYS

- *Unlimited Power: Why the President's (Warrantless) Surveillance Program is Unconstitutional*, 42 CASE W. RES. J. INT'L. L. 647 (2010) (invited)
- *Privacy is the Problem*, 19 WIDENER L. J. 873 (2010) (invited)
- *Is Nominal Use An Answer to the Free Speech & Right of Publicity Quandary? Lessons from America's National Pastime*, 11 CHAPMAN L. REV. 435 (2008) (invited)
- *Promoting Diverse Cultural Expression: Lessons from the U.S. Copyright Wars*  
     2 ASIAN J. OF WTO & INT'L HEALTH LAW & POL'Y 369 (2007) (invited)  
     *Reprinted in* COPYRIGHT INFRINGEMENT (Amicus Books 2008)
- *Copyright Lochnerism*, 33 N. KY. L. REV. 401 (2006) (invited)
- *Privacy as Process*, 2 GEO. J. OF LAW & PUB. POL. 39 (2004) (invited)
- *The Internet Revolution*, 20 SANTA CLARA COMPUTER & HIGH TECH. L. J. 205 (2003) (invited)
- *Is File Sharing Illegal?* Cleveland Free Times (Oct. 2003) (invited)
- *Think Twice Before You Type*, OPINION & COMM., 163 N.J.L.J. 23 (Feb. 19, 2001) (invited)
- *FOREWORD: A Brave New Cyberworld?*, 22 THOMAS JEFFERSON L. REV. 125 (2000) (invited)

## IN PROGRESS

- Privacy: It's None of Your Business
- We the People v. Me the People: The Struggle for the Soul of the U.S. Constitution
- Those Who Can, Teach: Promoting Creativity without Control
- The Constitution, Judicial Review & Human Behavior

## PRESENTATIONS

- Debate: "Internet Piracy and the Constitution," Case Western Reserve University, Sep. 2012.
- "Hate, Affinity & Merit: Why Diversity Matters" Power of Diversity University Lecture Series, Case Western Reserve University School of Law, Sep. 2011.
- Panelist, "Is the Affordable Care Act Constitutional?" Elana and Miles Zaremski Law Medicine Forum, Case Western Reserve University School of Law, Mar. 2011.



- “Privacy: It’s None of Your Business,” Faculty Research Program, The University of Akron School of Law, Apr. 2010.
- “A Stranger in a Strange Land,” Keynote Address, First Annual Midwestern APALSA Conference, Feb. 2010.
- “Privacy is the Problem” Symposium sponsored by Widener Law Journal, Widener University School of Law, Feb. 2010.
- A Debate on IP Infringement or Theft (with Professor Adam Mossoff, George Mason Law School, sponsored by The Federalist Society of Case Western Reserve University School of Law, Jan. 2010.
- “Of Two Minds: Trademark & Free Speech Laws’ Differential Regulation of Cognitive Space,” Symposium: Signifiers in Cyberspace sponsored by Center for Law, Technology & the Arts, Case Western Reserve University School of Law, Nov. 2009.
- “Unlimited Power: Why the President’s (Warrantless) Surveillance Program is Unconstitutional,” Symposium: Somebody’s Watching Me sponsored by Institute for Global Security Law & Policy, Case Western Reserve University School of Law, Oct. 2009.
- Supreme Court Preview 2009-2010 Term, American Constitution Society, Northeast Ohio and Case Western Chapters, Case Western Reserve University School of Law, Oct. 2009.
- Commentator: Rethinking Free Speech and Civil Liability, Privacy Law Scholars Conference, University of California, Berkeley School of Law, Jun. 2009.
- Intelligent Webs & Privacy Issues: Collaboration Technology & Engaging the Campus, Case Western Reserve University, May 2009
- Commentator: Junior Scholars in IP workshop, Michigan State University College of Law, Mar. 2009.
- Moderator: The Death of an Author: A Publishing Horror Story sponsored by the Case Western Reserve University, Jan. 2009.
- Moderator: Standing Rights, Symposium: Access to the Courts in the Roberts Era sponsored by the Case Western Reserve University Law Review, Jan. 2009.
- Debate Moderator: Was *Kelo* Wrongly Decided? Case Western Federalist Society, Case Western Reserve University School of Law, Nov. 2008.
- Supreme Court Preview 2008-2009 Term, American Constitution Society, Northeast Ohio and Case Western Chapters, Case Western Reserve University School of Law, Oct. 2008.
- “Does Law Inspire Creativity? An Empirical Analysis of Copyright’s Bounty,” Intellectual Property Scholars Conference, Stanford Law School, Aug. 2008.
- Commentator, “Inferring Private Data from Publicly-Available Sources” by Alessandro Acquisti & Ralph Gross, Privacy Law Scholars Conference, George Washington University School of Law, Jun. 2008.
- “Copyright’s Bounty,” Hosier Distinguished Visiting Intellectual Property Scholar, DePaul University School of Law, Apr. 2008.
- “Free Speech, Free Publicity?” Symposium: Publicity Rights in Bytes: Contemporary Issues in Entertainment & Sports Law sponsored by the Chapman Law Review, Feb 2008.
- “Promoting Diverse Cultural Expression: Lessons from the U.S. Copyright Wars,” International Conference: Cultural Diversity under International Trade Regime: Policy and Practices hosted by the Asian Center for WTO & International Health law and Policy, College of Law, National Taiwan University, June 2007.

- “Intellectual Property Aspects of Entrepreneurship,” Session Chair, Comparative Legal Aspects of Entrepreneurship in Canada and the United States sponsored by Canada-US Law Institute, Apr. 2007.
- “Sacred Violence: Religion & Terrorism,” Panel Moderator, The Roe Green Foundation Conference Presented by the Institute for Global Security Law and Policy, Mar. 2007.
- “The Great Writ: Civil Liberties in an Age of Terror,” Public Speaker Series sponsored by the Geauga County Democratic Party, Mar. 2007.
- “Fair Use & Copyright,” Getting Published Series sponsored by the Baker-Nord Center for the Humanities, Feb. 2007.
- “Copyright Lochnerism,” Symposium: First Amendment Lochnerism sponsored by the Salmon P. Chase College of Law & Northern Kentucky Law Review, Mar. 2006.
- “The NSA Wiretapping Controversy,” Mock U.S. Congressional Hearing sponsored by the Frederick K. Cox International Law Center and the Institute for Global Security Law & Policy, Case Western Reserve University School of Law, Feb. 2006, rebroadcast on NPR.
- “The Secondary Liability Dilemma,” AALS, Jan. 2006.
- “Grokking Grokster,” Ivy League Distinguished Scholar Lecture Series, Apr. 2005.
- “P2P & The Digital Paradigm,” Symposium: Hot Topics in IP Law at Duke University School of Law sponsored by the Intellectual Property Law Association, Apr. 2004.
- “Copyright: Beyond the Rhetoric,” Symposium: The Digital Challenge to Copyright Law sponsored by the Santa Clara Computer & High Technology Law Journal, Feb. 2004.
- “Privacy as Process,” Symposium: Security, Technology and Individual Rights at Georgetown University Law Center sponsored by the Georgetown Journal of Law and Public Policy, Mar. 2003.
- “Ferries, Bridges, and Information Superhighways,” Cardozo Law School Distinguished Speaker Series, Mar. 2003.
- “Creative Destruction and Fair Use,” Symposium: The Law & Technology of Digital Rights Management sponsored by the Berkeley Center For Law & Technology and Berkeley Technology Law Journal, Feb. 2003.
- “Creative Destruction and Fair Use,” Cornell Law School Faculty Workshop, Dec. 2002.
- “Vulnerability Reporting & the First Amendment,” Symposium: Software Security & Vulnerability Reporting sponsored by Seton Hall Law School Institute of Law, Science & Technology, Nov. 2002.
- “Creative Destruction and Fair Use,” Case Western Law School Faculty Workshop, Oct. 2002.
- “The Founders’ Privacy,” Symposium: Modern Studies of Privacy Law at University of Minnesota School of Law sponsored by the Minnesota Law Review, Feb. 2002.
- “What’s the Big Deal About Napster?” at Seton Hall Law School sponsored by the Intellectual Property and Entertainment Law Societies, Nov. 2000.
- “The Digital Dilemma” at Seton Hall Law School Institute of Law, Science & Technology, Aug. 2000.

## SERVICE

FACULTY SENATE COMMITTEE ON MINORITY AFFAIRS, 2010-11, 2011 (CHAIR)  
 PROMOTION AND TENURE COMMITTEE, 2004-PRESENT, 2008-09 (CHAIR), 2009-2010 (CHAIR)  
 CLINICAL FACULTY TENURE COMMITTEE, 2007-08 (CHAIR)  
 RANKINGS COMMITTEE, 2006-07

APPOINTMENTS COMMITTEE, 2003-04; 2004-5 (CHAIR)  
THE INTERNET LAW JOURNAL, FACULTY ADVISOR, 2003-2009  
THE JOURNAL OF LAW, TECHNOLOGY & THE INTERNET, FACULTY ADVISOR, 2009-PRESENT  
CO-DIRECTOR, CENTER FOR LAW, TECHNOLOGY & THE ARTS, 2006 TO 2012  
ASSOCIATE DIRECTOR, CENTER FOR LAW, TECHNOLOGY & THE ARTS, 2003 TO 2006

TEACHING

**CORNELL LAW SCHOOL**, Ithaca, NY 2002 to 2003  
Visiting Associate Professor of Law, Taught Cyberspace, Copyright, and Media Law.

**SETON HALL UNIVERSITY SCHOOL OF LAW**, Newark, NJ 2000 to 2003  
Associate Professor of Law, Taught Constitutional I & II, Cyberspace, and Copyright law.

Founding Director, Institute of Law, Science & Technology, developed IP curriculum and academic programs. Organized symposia and speakers. Advised students interested in IP, Internet, and Technology Law.

**THOMAS JEFFERSON SCHOOL OF LAW**, San Diego, CA 1999 to 2000  
Associate Professor of Law, Taught Constitutional and Cyberspace Law.

Founding Director, Center for Law, Technology & Communications, Established Center for Law, Technology & Communications. Developed IP and technology curriculum. Organized speakers.

**ST. THOMAS UNIVERSITY SCHOOL OF LAW**, Miami, FL 1998 to 1999  
Visiting Assistant Professor of Law, Taught Property, Intellectual Property, and Mass Media.

CLERKSHIP

**TIMOTHY K. LEWIS, U.S. COURT OF APPEALS**, Pittsburgh, PA 1995 to 1996

LITIGATION

**LEVINE PIERSON SULLIVAN & KOCH, L.L.P.**, Washington, D.C. Mar. 1997 to Aug. 1998  
Associate, Practice Areas: First Amendment, Media & Intellectual Property Law. Litigated all aspects of cases involving access to judicial proceedings and public records, defamation, and copyright infringement. Lead trial counsel in the criminal defense of a journalist. Researched and drafted certiorari petitions, appellate and trial briefs, and motions. Conducted depositions and witness interviews. Counseled clients on intellectual property and Internet issues.

**GIBSON, DUNN & CRUTCHER, LLP**, Washington, D.C. Sept. 1996 to Mar. 1997  
Associate & Summer Associate, Practice Areas: Constitutional, First Amendment, Media & Antitrust Law. Researched and drafted certiorari petitions, appellate and trial briefs, motions, and litigation memorandums of law. Negotiated with opposing counsel. Interviewed witnesses.

**NEW YORK CIVIL LIBERTIES UNION**, New York, NY Fall 1994  
Fellow, Assisted in First Amendment challenge of the Cable Act and censorship of leased access cable television.

**PAUL, WEISS, RIFKIND, WHARTON & GARRISON**, New York, NY Summer 1994  
Summer Associate, Drafted briefs, memorandums of law, and corporate documents.

**THE LEGAL AID SOCIETY**, New York, NY Summer 1993  
CIVIL APPEALS & LAW REFORM UNIT  
Legal Intern, Drafted trial briefs and memorandums of law on fair housing and healthcare.

**AMERICAN CIVIL LIBERTIES UNION**, New York, NY 1992 to 1993  
CHILDREN'S RIGHTS PROJECT & NATIONAL LEGAL DEPARTMENT  
Legal Intern, Drafted trial briefs and memorandums of law in constitutional challenges to foster care and educational financing.

EDUCATION

**NEW YORK UNIVERSITY SCHOOL OF LAW**, J.D., Class of 1995  
Honors: *cum laude*  
ARTHUR GARFIELD HAYS CIVIL LIBERTIES FELLOWSHIP: *Leonard Boudin Fellow*

Activities: Civil Rights & Civil Liberties Union, *Founder*

**HARVARD LAW SCHOOL**, Visiting J.D. Student, 1993-1994

**BROWN UNIVERSITY**, A.B. Political Science, Class of 1992  
Honors: Honors in Political Science  
Philo Sherman Bennet Prize

Activities: Varsity Fencing Team 1988-92, *Captain*, 1991-92  
Alpha Delta Phi, Brunonian Chapter

PROFESSIONAL

ASSOCIATIONS New York State Bar (admitted 1996), Washington D.C. Bar (admitted 1997), Copyright Society of American, American Intellectual Property Law Association, American Bar Association.

ORGANIZATIONS

Board of Directors, American Civil Liberties Union of Cleveland  
Board of Directors, A Cultural Exchange  
Central Committee Member, Geauga County Democratic Party

OTHER

Candidate for Ohio State Representative, 2006  
Regional Member, Ohio Judicial Appointments Recommendation Panel, 2007  
2008 Democratic Primary – Obama Presidential Campaign Precinct Coordinator  
2008 General Election - Ohio Democratic Party/Obama Presidential Campaign County Voter Protection Liaison/Coordinator

PERSONAL

INTERESTS      Olympic target archery, Running, Cycling, Golf, Boxing, Martial Arts, Fencing, Practical Pistol & 3 Gun, Musical Theater, Piano, and Cooking.



## **SEXUAL HARASSMENT POLICY**

### **INTRODUCTION & POLICY STATEMENT**

It is the policy of Case Western Reserve University to provide a positive, supportive, discrimination-free educational and work environment. Sexual Harassment is unacceptable and unlawful conduct, which will not be tolerated. The purpose of this policy is to define sexual harassment and the procedures the university uses to investigate and take appropriate action on complaints of sexual harassment. This policy and the accompanying procedures shall serve as the only internal university forum of resolution and appeal of sexual harassment complaints.

This policy applies to all members of the university community including all students (including Post-Doctoral Fellows and Post-Doctoral Scholars), faculty, staff, and other university officials, whether full or part-time or under temporary contract, and guest lecturers, volunteers and visitors. Sexual harassment may involve the behavior of a person(s) regardless of the person's gender identity or expression against a person(s) of the opposite or same gender or against a person who is transsexual or transgender. All members of the university community must adhere to the sexual harassment policy and report violations of the policy.

The university is committed to educating its members about sexual harassment via this policy and related resources. Further information about sexual harassment and frequently asked questions about this policy can be found on the University's Sexual Conduct website at <http://www.case.edu/provost/sexualconduct/>.

#### **Laws Governing Sexual Harassment**

Sexual harassment in the workplace is a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964 and by Section 4112.02 of the Ohio Revised Code. EEOC Guidelines require employers to affirmatively address the issue of sexual harassment and to adopt procedures for the prompt resolution of employee complaints. Similarly, federal regulations implementing Title IX of the 1972 Education Amendments require educational institutions that receive federal funds to provide a prompt and equitable procedure for resolving complaints of sex discrimination, including sexual harassment claims that impair an individual's right to their education or institutional benefits or activities.

#### **DEFINITION**

Sexual Harassment can be defined as any unwelcome verbal or non-verbal sexual advance, requests for sexual favors, other verbal or physical conduct of a sexual nature, and/or conduct directed at an individual(s) because of gender when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or student status; or
- b. Submission to or rejection of such conduct is used as the basis for decisions affecting that individual with regard to employment (raises, job, work assignments, discipline, etc.) or to student status (grades, references, assignments, etc.); or
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or educational experience or creates an intimidating, hostile, or offensive work and/or educational environment\*. Such conduct generally involves more than one incident and must be severe or pervasive.

\*The work or educational environment includes, but is not limited to: offices, classrooms and clinical settings; residence halls and Greek Houses; on or off campus interactions between university community members; and all university sponsored activities, programs, or events (including off-campus activities such as international travel programs).

### **Examples of Sexual Harassment:**

Acts that constitute sexual harassment take a variety of forms and may include but are not limited to the following *unwelcome* actions:

1. Propositions, invitations, solicitations, and flirtations of a sexual nature.
2. Threats or insinuations that a person's employment, wages, academic grade, promotional opportunities, classroom or work assignments, or other conditions of employment or academic life may be adversely affected by not submitting to sexual advances.
3. Verbal expressions of a sexual nature, including sexual communications about a person's body, dress, appearance or sexual activities; the use of sexually degrading language, name calling, sexually suggestive jokes, or innuendoes; suggestive or insulting gestures, sounds or whistles; sexually suggestive phone calls.
4. Sexually suggestive objects or written materials, such as e-mail or internet communications, pictures, photographs, cartoons, text messages, videos, or DVD's.
5. Inappropriate and unwelcome physical contact such as touching, patting, pinching, hugging or other sexually suggestive contact.
6. Stalking of a sexual nature; i.e. persistent and unwanted contact of any form whether physical, electronic or by any other means.
7. Stereotyping or generalizing about a group based on gender. These types of comments typically constitute sexual harassment when associated with other sexual behavior or comments.

### **Relationships Involving Authority or Power**

When one party has any professional responsibility for another's academic or job performance or professional future, the university considers sexual relationships between the two individuals to be a basic violation of professional ethics and responsibility; this includes but is not limited to sexual relationships between faculty (including teaching assistants and laboratory supervisors) and their students or between supervisors and their employees, even if deemed to be mutually consenting relationships. Because of the asymmetry of these relationships, "consent" may be difficult to assess, may be deemed not possible, and may be construed as coercive. Such relationships also may have the potential to result in claims of sexual harassment. See Consensual Relationship Policy at <http://www.case.edu/finadmin/humres/policies/standards/cr.html>. or <http://www.case.edu/president/facsen/frames/handbook.htm>.

Although Sexual Harassment often takes place when the alleged harasser is in a position of power or influence (e.g., a faculty advisor to a student, supervisor to supervisee), other types of harassment are also possible e.g., peer to peer.



### **Intention vs. Impact**

The fact that someone did not intend to sexually harass an individual is not considered a sufficient defense to a complaint of sexual harassment. For example, in some instances, cultural differences may play a role in the interpretation of behavior, by either the accuser or accused, which may result in a complaint of sexual harassment. It is expected that all members of the university community are knowledgeable about what constitutes sexual harassment under this policy. Although the accused's perceptions will be considered, in most cases, it is the effect and characteristics of the behavior on the accuser, and whether a reasonable person in a similar situation would find the conduct offensive that determine whether the behavior constitutes sexual harassment.

### **Academic Freedom**

Case Western Reserve University adheres to the principles and traditions of academic freedom. As stated in the Faculty Handbook, academic freedom is a right of all members of the university faculty and applies to university activities including teaching and research

<http://www.case.edu/president/facsen/frames/handbook>. Each faculty member may consider in his or her classes any topic relevant to the subject matter of the course as defined by the appropriate educational unit.

Case Western Reserve University also recognizes, however, that these freedoms must be in balance with the rights of others not to be sexually harassed. It is therefore understood that the principles of academic freedom permit topics of all types, including those with sexual content, to be part of courses, lectures, and other academic pursuits. If there are questions about whether the course material or the manner in which it is presented falls within the definition of sexual harassment, the concerned party(s) should contact a designated reporting office representative (See: Designated Reporting Offices section in this policy).

## **RESPONSIBILITIES OF THE UNIVERSITY COMMUNITY**

Any member of the university community who is consulted about and/or witnesses potential sexually harassing behavior has the responsibility to advise the accuser of the university's sexual harassment policy and encourage prompt reporting to a designated reporting office.

When a firsthand allegation of sexual harassment is made and the alleged harasser is named, members of the university community are obligated to report the allegation to one of the designated reporting office representatives (see Chart II). A firsthand allegation is defined as an allegation from a person who experienced alleged sexual harassment, or from a person who hears the allegation directly from the person who experienced the alleged sexual harassment. Because the university is committed to a positive educational and work environment, in instances where individuals witness or hear about behavior that could be construed as sexual harassment, the individual is encouraged to report the incident to the designated reporting offices.

Confidential resources( i.e. those members of the university who are licensed or designated by law as professionals who can receive privileged communication, and receive information regarding possible sexual harassment in the context of a professional relationship with the reporter of that information) are not required to report allegations of sexual harassment to university representatives (see Chart I within this policy).

## **Specific Responsibilities of University Community Members**

**All members of the university community are responsible for:**

1. Complying with this policy;
2. Identifying and reporting sexual harassment; and
3. Cooperating in any subsequent investigation, including appearing before a hearing committee.

**Deans, directors, department chairs, department heads, supervisors, and administrative officers are responsible within their area for:**

1. Complying with this policy;
2. Identifying and reporting sexual harassment;
3. Informing individuals bringing complaints about the university's policy and their right to talk to a representative in the Office of Inclusion, Diversity and Equal Opportunity or the University Office of Student Affairs as appropriate;
4. Cooperating and participating in investigations, resolutions of complaints, and the implementation of recommended sanctions, if any; and
5. Providing a work and educational environment that is free from harassment and intimidation.

**Designated Reporting Office Representatives in the Office of Inclusion, Diversity and Equal Opportunity (216-368-8877), and the Office of Student Affairs (216-368-2020), are responsible for:**

1. Complying with this policy;
2. Identifying and reporting sexual harassment;
3. Coordinating, disseminating, and implementing this policy;
4. Serving as a resource for all matters dealing with sexual harassment complaints;
5. Conducting informal sexual harassment complaint inquiries and facilitating resolutions as appropriate; and
6. Referring formal sexual harassment complaints to the Vice President for Inclusion, Diversity and Equal Opportunity.

## **REPORTING**

The university supports and encourages anyone who believes they have been sexually harassed to report the incident to the reporting source of their choice. Individuals who wish to seek advice or obtain consultation regarding sexual harassment have two types of university resources:

1. **Confidential Resources** (See Chart I)
  - a. Enables the person(s) concerned about sexual harassment to seek advice, support, and guidance about how to manage the situation without initiating university action.
  - b. Discussing a matter with a confidential counseling resource is not considered a report to the university or a request that any action be taken by the university in response to any allegation.

**Chart I. University Confidential Resources**

Student Complaints	Faculty or Staff Complaints
University Counseling Services (216) 368-5872 (24 Hours)	Employee Assistance Program (216) 241-EASE (3273) or (800) 521-3273 (24 hours)
University Health Services (216) 368-2450 (24 hours)	
Flora Stone Mather Center for Women (216) 368-0985 Ask to speak with the Licensed Professional Health Advocate (M-Fri) 8:30 a.m. to 5:00 p.m.	
Inter-Religious Center Muslim Campus Ministry, Newman Catholic Campus Ministry, and United Protestant Campus Ministry (216) 421- 9614 or Hillel (216) 231-0040 (Ask to speak with a Clergy person)	

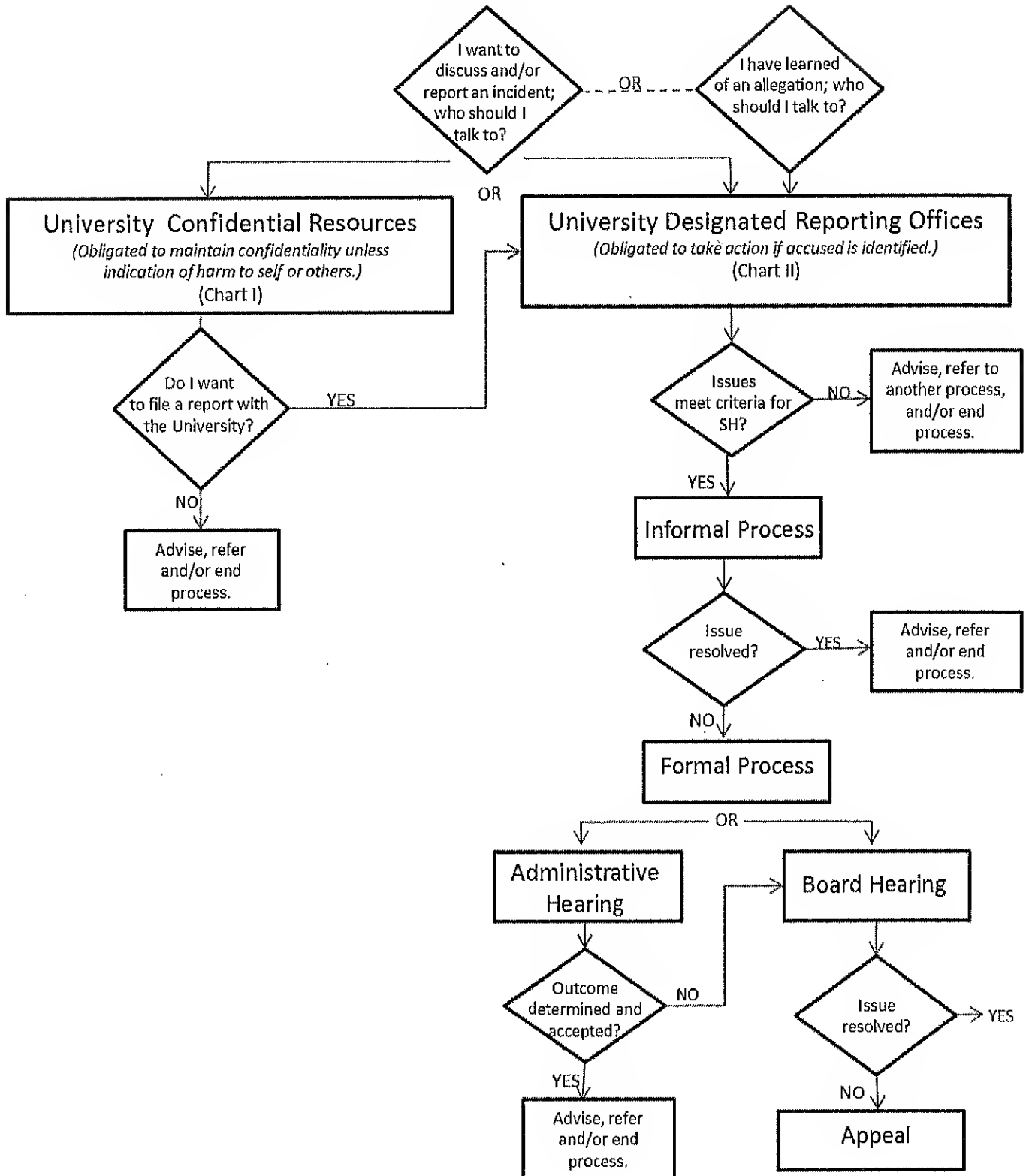
**2. Designated Reporting Offices (see Chart II)**

- a. Enables the person(s) concerned to seek advice, support, and guidance about sexual harassment *without disclosing* the name(s) of the accused.  
and/or
- b. Enables the person to file a complaint of sexual harassment with the university, and when the name of the accused is made known to a designated reporting office representative, university action will be initiated.
- c. Designated reporting office representatives are obligated to investigate complaints of sexual harassment and to pursue university action as appropriate; consequently, the designated reporting resources will attempt to keep complaints confidential to the extent possible and consistent with the university's requirement to investigate allegations and take appropriate action.

**Chart II. University Designated Reporting Offices**

Student Complaints	Faculty Complaints	Staff Complaints
Associate Vice President for Student Affairs (216)368-2020 (M-Fri) 8:30 a.m. to 5:00 p.m.	Faculty Diversity Officer (216)368-8877 (M-Fri) 8:30 a.m. to 5:00 p.m.	Equal Employment Opportunity and Diversity Specialist (216) 368-8877 (M-Fri) 8:30 a.m. to 5:00 p.m.

## Student, Faculty, and Staff Sexual Harassment Complaint Process



### **Complaints Involving Different Constituents**

When a sexual harassment complaint is made against an individual from a different constituency than the accuser (i.e. students/faculty complaints, faculty/staff complaints, etc.), the designated reporting office representatives representing each constituency will work together to investigate and bring resolution to the complaint.

### **Timely Reporting**

Prompt reporting is in the best interest of the entire university community and enables the university to address and correct unacceptable behavior and provide support for the person(s) bringing the complaint. Complaints must be brought to the attention of the university within two years of the alleged incident. In some instances, the university reserves the right to utilize the sexual harassment policy and procedures and take action concerning a complaint brought beyond this period of time.

Anyone who has been sexually harassed may choose whether to pursue both the university sexual harassment process and/or criminal prosecution (if applicable). However, choosing not to pursue university or criminal prosecution does not remove the responsibility of the university to investigate and/or take action (*See Investigative Responsibility Section of this policy*).

### **Reporting Alternatives**

#### **Anonymous Reports**

An anonymous report of sexual harassment is not considered a complaint under the policy. While the university will attempt to perform an inquiry as to any anonymous report received, anonymous reporting will limit the ability to conduct an effective inquiry and take action concerning the report (see University's Responsibility section of this policy).

#### **Confidentiality**

The university will attempt to maintain confidentiality to the extent possible within legitimate conduct of an investigation and/or as required by law.

In order to protect the integrity of the inquiry, investigation, and resolution through the use of this policy, all parties and witnesses are expected to maintain the confidentiality of the process. However, confidentiality is not required if disclosure is required by law, or if disclosure is necessary to report a crime, or in relation to the right of a student accused or accuser to re-disclose the outcome of the process under the Family Educational Rights and Privacy Act (FERPA).

In light of the expectation of confidentiality, the university recognizes that the accuser, accused, and witnesses may need support. Should the need arise for parties and/or witnesses to share with others information regarding this process, they are encouraged to confer with the designated reporting representatives before taking this action.

#### **Non-Retaliation**

Retaliation against persons raising concerns about sexual harassment, against person initiating a complaint, or against witnesses or any person cooperating in the sexual harassment process is prohibited and will constitute separate grounds for disciplinary action. Retaliation includes behavior on the part of the accused or the accuser and other related persons, including, but not limited to, acquaintances, friends, and family members. Although independent action will be taken against

anyone engaging in retaliation for making a report of sexual conduct, the accuser and the accused are responsible for discouraging such actions and will also be held responsible to the extent of their involvement in the retaliation.

An individual who believes they have experienced retaliation should contact a designated reporting office representative (see Chart II) under the policy and the university will investigate the complaint. If the university determines that evidence exists to support that retaliation occurred, appropriate action will be taken, regardless of the outcome of the underlying sexual harassment complaint.

## **SEXUAL HARASSMENT COMPLAINT PROCEDURES**

### **UNIVERSITY RESPONSE**

#### **University's Responsibility**

Once a report of sexual harassment is made to one of the designated reporting office representatives, the university is obligated by law to investigate and to take appropriate action regardless of whether the accuser wishes to participate or considers the behavior sexual harassment.

The university's authority to investigate, to compel cooperation, or to impose sanctions against those who are not members of the university community is limited. The informal and formal processes as described below apply to faculty, staff, and students of the university. Complaints against guest lecturers, volunteers, and visitors will be referred to the Vice President of Inclusion, Diversity and Equal Opportunity or his/her designee for investigation and appropriate action.

#### **Immediate University Action**

Upon receiving a complaint, the designated reporting office representative will take appropriate immediate actions to protect the safety and well-being of the individuals involved in a complaint of sexual harassment. Generally, such actions include but are not limited to the following:

1. Notify the accused that a complaint has been made against them;
2. Provide a copy of the university sexual harassment policy to both parties;
3. Establish an agreement between the parties that they are not to initiate contact with the other party or parties until further notice by the university. Failure to cooperate or honor the agreement could result in restricting either party's presence on campus;
4. Have each of the parties and any witnesses acknowledge the expectation of confidentiality as outlined in this policy;
5. Advise all parties and any witnesses that they may not retaliate against any party or any witness involved in a sexual harassment complaint.

#### **University Police Responsibility**

There may be instances in which sexual harassment constitutes a criminal act. If a designated reporting office or the Case Police receives a complaint, or is made aware of a complaint of sexual harassment that also involves possible criminal activity, the designated reporting office and/or Case Police have a responsibility to uphold and enforce the law, even if the person sexually harassed does not want to participate in the process and/or make a complaint.

## **COMPLAINT RESOLUTION**

Those having a concern about sexual harassment are encouraged to refer to the sexual conduct website at <http://www.case.edu/provost/sexualconduct/> for information and resources about sexual harassment. To discuss university policy and/or to file a complaint, the designated reporting office representatives in the Office of Inclusion, Diversity and Equal Opportunity or the University Office of Student Affairs will meet with any person(s) who raise concerns about sexual harassment at the university. They will provide general advice and resources about sexual harassment and will also discuss options for pursuing both informal and formal resolution of a sexual harassment complaint.

### **Resolving the Complaint**

Once the accuser initiates an allegation and the accused person or group is identified, the designated reporting office representatives will conduct an initial inquiry of the sexual harassment complaint.

#### **Initial Inquiry**

An initial inquiry will include interviews with the person(s) reporting harassment and those person(s) accused of harassment and may include interviews of other potential witnesses. Following the initial inquiry, the designated reporting office representative will determine if the information gathered during the initial inquiry indicates that the complaint falls within the sexual harassment policy.

If the complaint falls within the sexual harassment policy, the designated reporting office representative(s) will proceed with the informal process or determine if the formal process should be utilized to bring resolution to the complaint. If the initial inquiry finds that the complaint or a portion of the complaint does not fall within the sexual harassment policy, the accuser may be referred to other university policies or resources regarding the complaint or that portion of the complaint and/or the matter will be closed.

While an initial inquiry will be pursued for every identified complaint, generally, disciplinary action will not be taken against an individual or group unless the formal complaint process is used.

### **Rights Under the Process**

The accuser and the accused can expect the university to respect the rights of all involved by following the stated university sexual harassment process.

#### **Rights of the Accuser and the Accused:**

- To confidentiality as provided in this policy (see above).
- To options outlined in the informal process or formal process if applicable.
- To the presence of an advisor at a board hearing (see Board Hearing Procedures).
- To not be questioned about past sexual conduct unless relevant to the case.
- To have the allegations investigated in a thorough and timely manner.
- To refrain from making self-incriminating statements. However, the university will make a determination of whether a violation of the sexual harassment policy occurred based on the information presented.
- To be informed of the outcome of the sexual harassment process.

## **Informal Process**

### **Purpose**

The informal process is an opportunity to bring resolution to an informal complaint through awareness, education, and/or a facilitated discussion. During an informal process, written statements are not taken from the accuser or the accused, and no hearing is conducted to determine if the sexual harassment policy has been violated.

### **Informal Process Steps**

#### **Step 1.-Facilitate Resolution**

The designated reporting office representative(s) utilizes the information gathered during the initial inquiry to facilitate an appropriate resolution to the informal complaint. The following are examples of possible options, one or more of which may be used to bring resolution to an informal complaint.

#### **Potential Informal Actions:**

- a. Distribute a copy of the sexual harassment policy as a reminder to the department or area whose behavior is being questioned;
- b. Educate all parties regarding the university sexual harassment policy;
- c. Advise the person(s) how to communicate the unwelcome nature of the behavior to the alleged harasser;
- d. Conduct a sexual harassment educational workshop for the designated department/school/university organization;
- e. Meet with the accused to raise awareness about alleged inappropriate behavior and provide notice about possible university consequences;
- f. Facilitated discussion with the agreement of the accuser, accused, and the designated reporting office representative(s);
- g. Institute alternative work, living arrangements, class schedule, advisor/supervisor arrangements; or
- h. Limit contact or impose no contact between accused and accuser.

#### **Step 2-Document Informal Resolution**

At the conclusion of the informal process a letter summarizing the outcome(s) of the process will be sent by the designated reporting office representative(s) to the accuser and accused and other appropriate university officials to bring closure to the matter (see Retention of Documents section in this policy).

If the matter is not resolved to the satisfaction of the accuser or the accused utilizing the informal process, and/or the university determines the matter should be resolved through the formal process, the accuser, the accused and/or the university may pursue the formal process. In such an instance, the accuser, the accused and/or the university may pursue the formal process within 5 business days of the date on the informal outcome letter.

## **Formal Process**

The university offers a formal process leading to resolution of a complaint if the complaint falls within one of the elements of the university definition of sexual harassment (see definition on page 1: a, b, or c); the informal resolution is not agreed upon or fails to satisfactorily resolve a concern; and/or the university determines the formal process is necessary.



To initiate the formal process, the person or university representative making the complaint must complete Step 1. Steps 2-4 will follow.

**Step 1-Accuser's Written Statement:**

1. Complete a written statement of the sexual harassment complaint. The statement should be as specific as possible, including dates, times, locations, a description of the alleged harassing behavior and the name(s) of the alleged harasser(s).
2. Provide a list of any person(s) who may have information that would be helpful to the hearing process.
3. Submit the above information to the designated reporting office representative.

**Step 2- University's Response:**

The designated reporting office representative will contact the accused, provide him/her with a copy of the written statement, and ask that a written response to the complaint be submitted by a specified date.

**Step 3-Accused's Response:**

1. Submit a written response to the complaint to the designated reporting office. The response will be forwarded to the accuser and/or the university representative bringing the complaint, when applicable.
2. Provide a list of any person(s) who may have information that would be helpful to the hearing process.

**Step 4-Determination of Administrative Hearing vs. Board Hearing:**

A formal process may be resolved in one of two ways, through an administrative hearing or a board hearing.

**An administrative hearing may be used when all of the following exist:**

1. The accuser wishes to use an administrative hearing to resolve the complaint.
2. The accused has admitted to the alleged harassment and admits that the conduct is or could be construed as sexual harassment under the university's policy.
3. The accused agrees to an administrative hearing to resolve the complaint.
4. The designated reporting office representative(s) determine(s) that an administrative hearing is appropriate to bring resolution to the complaint.

**A board hearing is used when the following exists:**

1. The accuser wants to use a board hearing to resolve the complaint, and/or the designated reporting office representative(s) determine(s) that a board hearing is necessary to resolve the complaint.

Or

2. The accused does not admit that the alleged harassment has occurred and/or does not admit that the alleged conduct is sexual harassment under the university's policy.

### **Formal Process: Administrative Hearing**

If the requirements listed above are met, an administrative hearing will be conducted. The function of this hearing is to hear from the accuser and the accused and to determine an appropriate sanction.

All administrative hearings will be conducted by the Vice President for Inclusion, Diversity and Equal Opportunity or his or her designee (the university hearing representative).

#### **Administrative Hearing Procedure:**

1. The accuser and accused will be notified of the date, time and location of the hearing.
2. The hearing is closed and generally includes only the accused and the Vice President for Inclusion, Diversity and Equal Opportunity or his or her designee.
3. The accuser may submit an additional written statement concerning the effect of the harassment and the desired sanction for the accused.
4. The accused may make a statement about the harassment and the possible sanction for the harassment, and present any other information to the university hearing representative.
5. The university hearing representative may ask questions of the accused and will consider the statements and any relevant information received during the investigation.
6. Prior to determining a sanction: the Vice President for Inclusion, Diversity and Equal Opportunity or his/her designee will consult with the following individuals depending on the constituency of the accused:

**When a student is the accused:** Vice President for Student Affairs or his/her designee;

**When a faculty member is the accused:** Provost or his/her designee;

**When a staff member is the accused:** Vice President for Human Resources or his/her designee.

7. After the hearing is concluded, the Vice President for Inclusion, Diversity and Equal Opportunity or his/her designee will make a decision promptly on the appropriate sanction and communicate that decision in writing to the accused, accuser, and to any university administrators, faculty or staff who require the information to carry out the sanction.

#### **Administrative Hearing Appeal Process**

If the accuser or the accused is not satisfied with the outcome of the administrative hearing, either may notify the Vice President for Inclusion, Diversity and Equal Opportunity or his/her designee of the desire to initiate a formal board hearing. Appeals must be submitted within five (5) business days of receipt of the written decision. A formal board hearing as outlined below will then be held.

### **Formal Process: Board Hearing**

**Sexual Harassment Board Membership:** A sexual harassment board is appointed by the President annually and will include representatives of the administration, faculty, staff, and students. The appointees serve one-year terms renewable at the option of the President for up to three consecutive years. All board members will receive training specific to sexual harassment issues.

**Hearing Board Composition:** Three representative members will be selected from the board-at-large (faculty, staff and/or students) to serve as the hearing board for an individual case.

**Chairperson:** The Vice President of Inclusion, Diversity and Equal Opportunity or his/her designee serves as the chairperson and is an ex-officio, non-voting member of the board and facilitates the hearing process.

**Board Members:** The role of the selected board members is to determine if the action(s) or behavior(s) of the accused violates the university's sexual harassment policy. If the board finds the accused in violation of the policy, it will determine a sanction(s) to resolve the complaint.

**Pre-Hearing Procedure:** Prior to the board hearing, the chairperson will:

1. Determine available and appropriate hearing board members. An attempt will be made to include board members representing the constituencies of the accuser and the accused;
2. Consult with the accuser, the accused and potential board members to determine any personal and/or professional conflicts of interest that may make the board member unable to render an unbiased decision. All board participants are required to disclose any personal and/or professional conflicts of interest to the chairperson prior to agreeing to participate in a board hearing. The chairperson will determine whether a member should not serve on the board because of a conflict of interest;
3. Advise the accuser and accused of their right to have an advisor at the hearing, who must be a current student, faculty or staff member of the university community. An advisor may not be an attorney from outside the university community or a witness in the matter. Advisors may only consult with their advisee; they may not participate in the hearing in any way or address the board unless responding to a direct question from the chairperson;
4. Allow the board to require relevant members of the university community to participate in the hearing and request those outside the university community to appear at the hearing;
5. Notify all board members, the accuser, the accused, the witnesses and all those involved in the hearing process that the hearing is confidential and should not be discussed outside the hearing proceedings;
6. Make a determination as to the relevance of the information submitted and prepare information to be considered by the board; the information should include the following:
  - Accuser's written statement;
  - The accused's response;
  - Any other information submitted by the accuser or accused as deemed relevant to the complaint;
  - Any other information that may be relevant to the complaint;
  - Witness list (Prior to the hearing, each witness will be expected to submit a written statement about their knowledge of the complaint).
7. Provide accuser, accused, and advisors an opportunity to review all information prior to the hearing;
8. Arrange a hearing date, time, and location and notify all hearing participants in writing;
9. Advise board members about the complaint and the hearing procedures.

**Hearing Procedure:**

1. The chairperson will convene the hearing by introducing the participants and explaining the sexual harassment hearing purpose, procedures and standard of proof;

2. Standard of Proof is preponderance of evidence, which means that the board must be convinced, in light of all the information presented, that it is more likely than not that the sexual harassment was violated;
3. An audio recording of the hearing will be made;
4. The accuser will be invited to make a statement to the board;
5. The accused will be invited to make a statement to the board;
6. Witnesses invited to appear before the board will be asked to submit a written statement;
7. Board members will be permitted to ask questions at the conclusion of each statement. The accuser and the accused may then ask questions of each other. All questions must be directed to the chair.
8. The accuser, the accused and their advisors will be permitted to sit in the hearing during all statements and questioning. Witnesses will be permitted to attend only during their own statements and questioning.
9. The board may ask further questions of the accuser and the accused after it has heard from all witnesses invited to appear.
10. After all statements and questioning are completed, the board will dismiss the accuser, the accused and their advisors from the hearing and meet to discuss findings in confidence.
11. The board will consider all information received as part of the hearing process.
12. The board will issue one of the following findings:
  - a. The university's sexual harassment policy was not violated or
  - b. The university's sexual harassment policy was violated;
13. The board may also determine that the accuser's actions may violate some other university policy. This information will be provided to the chairperson, who will direct the information to the university official for further investigation and resolution.
14. If the board determines that the sexual harassment policy was violated, the board members will determine sanctions. Sanctions will be based on the nature and severity of the offense and/or on prior violations of university policy. In general, sanctions may include, but are not limited to, one or more of the following:
  - Apology and/or reprimand;
  - Participation in educational, skills or management training;
  - Written warning, or letter of reprimand;
  - Institute alternative work and/or living arrangements, class schedules, advisor/supervisor arrangements;
  - Limit contact between accused and accuser;
  - Faculty and staff may face suspension without pay, consideration of or denial of advancement or pay raise, demotion, or termination for cause;
  - Students may be suspended from the university, university housing, selected activities or organizations; placed on probation; or expelled from the university.
15. Prior to determining a sanction, the board will consult with the following individuals depending on the constituency of the accused:
  - **When a student is the accused:** Vice President for Student Affairs or his/her designee
  - **When a faculty member is the accused:** Provost or his/her designee
  - **When a staff member is the accused:** Vice President for Human Resources or his/her designee

## Report of Findings

1. The board shall draft a written report that includes its finding of whether the policy has been violated or the policy has not been violated, the reason for the finding, and sanctions (if applicable).
2. The chairperson will distribute a copy of the report to the accuser, accused, and to the accused's department chair, dean/supervisor, and appropriate vice president(s) or his/her designee. A copy of the report will be kept on file in the Office of Inclusion, Diversity and Equal Opportunity. The chairperson will identify and notify the appropriate individuals to carry out the accused's sanctions, if applicable.

## Appeal Process

Either the accused or the accuser may appeal the board's finding and/or sanction to the president on the basis for appeal set out below. Appeals must be submitted to the Vice President for Inclusion, Diversity and Equal Opportunity or his/her designee **within five business days of receipt of the written decision** and must specify the grounds for the appeal.

- The grounds on which an appeal may be filed with the president are limited to the following:
  1. New information not available to the board which, if available at the time of the hearing, may have affected the decision
  2. Evidence that established procedures were not followed in a manner that may have affected the decision, and/or
  3. The sanction was inappropriate for the violation
- The president shall review the report and sanctions to be imposed, and may review any documents, the recording or statements presented to the board
- The president may accept, reject, or modify the finding and/or sanctions of the board based on one of the three grounds for appeal.
- The president will communicate his/her decision, in writing, to the Vice President for Inclusion, Diversity and Equal Opportunity or his/her designee, who will forward the decision to the accused, the accuser, and the board members.
- If the president rejects or modifies the board's decision, the Vice President of Inclusion, Diversity and Equal Opportunity or his/her designee also shall forward the president's decision to the accused's department chair, dean/supervisor, and appropriate vice president(s).
- The president's decision shall be final with the exception of certain faculty sanctions described in "Additional Faculty Sanction Process".

## Complaints by the University

The university may bring a complaint against an accused person in instances in which the accuser is not willing to bring a complaint and the university determines it is necessary for the university to initiate a complaint. In such a case, the university will select a representative to act during the formal process.

Generally, if the accused is a faculty member, the university representative shall be the Provost or his/her designee; if the accused is a student, the university representative shall be the Vice President for Student Affairs or his/her designee; and if the accused is a staff member, the university

representative shall be the Vice President for Human Resources or his/her designee. If the university representative is the accused or a potential witness, the president shall appoint the university representative. The university representative shall have the same rights and responsibilities as the accuser as outlined in this policy. The university representative shall not be an attorney from the Office of General Counsel.

#### **Additional Faculty Sanction Process**

If the sanction issued to a faculty member, following any appeals, is (1) termination of a tenured faculty member's appointment or (2) demotion in academic rank of a faculty appointment (professor, associate professor, assistant professor, or instructor) then the procedures in Section IV of the Faculty Handbook are initiated. The factual findings and conclusions of the sexual harassment board, or the president following appeal, shall be determinative as to whether the university's sexual harassment policy has been violated. The Section IV of the Faculty Handbook proceedings shall be limited to a determination of whether the finding constitutes just cause for termination of the tenured faculty appointment or for demotion in academic rank.

#### **False Claims of Sexual Harassment**

The University reserves the right to take appropriate action concerning members of the community who bring false claims of sexual harassment. A "false claim" exists when a person files a complaint against another person which the accuser knows is not true. No complaint will be considered "false" solely because it cannot be corroborated or because a formal process found there was no violation of the university's sexual harassment policy. An accused may file a complaint of a false claim of sexual harassment by contacting one of the designated reporting office representatives under the policy. The university will investigate the complaint of a false claim and if it determines that evidence exists to support the false claims complaint, it will take appropriate action, which may include disciplinary action up to and including suspension, expulsion or termination.

#### **RETENTION OF DOCUMENTS**

All records will be retained for at least as long as the accused and/or the accuser(s) are members of the university community. Records will be kept in a confidential and secured location and only made available to designated reporting office representative(s), other appropriate university officials, or other authorized individuals as determined by law.

**Informal Complaints:** Information about all informal complaints will be kept on file in the offices of the designated reporting office representatives, and in the Office of Inclusion, Diversity and Equal Opportunity, and in a confidential file in the appropriate dean's and/or department chair's and/or supervisor's office when such dean/chair/supervisor is notified of the informal complaint to ensure that the university is maintaining records of those individuals about whom multiple informal complaints have been made and/or to enforce the informal resolution.

**Formal Complaints:** If the accused is found to have violated the sexual harassment policy, a copy of the decision letter will be retained in the individual's official university file.

If the person found in violation is a:

**Faculty:** The information will be kept on file in the Office of the Provost, the office of the appropriate dean and department, and the Office of Inclusion, Diversity and Equal Opportunity.

**Staff:** The information will be kept on file in Human Resources, the Department, and the Office of Inclusion, Diversity and Equal Opportunity.

**Student:** The information will be kept on file in the University Office of Student Affairs, the Dean's Office of the appropriate school, and the Office of Inclusion, Diversity and Equal Opportunity.

If the accused is found not to have violated the sexual harassment policy, a copy of the decision will be retained in the Office of Inclusion, Diversity and Equal Opportunity.

#### **Annual Report**

An annual report of sexual harassment complaints and their resolutions shall be produced by the Vice President of Inclusion, Diversity and Equal Opportunity or his/her designee and accessible on the Office of Inclusion, Diversity and Equal Opportunity website. The report shall identify accusers and accused by constituency only, e.g., student, staff, faculty.

Fall 2011





## QUESTIONS SOMEONE SHOULD ASK DEAN MITCHELL

Dean Mitchell you've told members of the Case faculty that you believe that teaching ability is irrelevant to law school faculty tenure decisions that in fact student evaluations of faculty should be burned and only legal scholarship ought to be considered. With an approach like that what kind of teaching can law students at Case expect while you are dean.

Dean Mitchell about half of all law students today are female. What should female law students expect from a dean who, in his short time in Cleveland, has already had affairs with a Case graduate student, a recent Case law grad, a local lawyer, and the girlfriend of our personal assistant?

Dean Mitchell even though your four divorces may not by themselves raise questions about your fitness to control the education of young women, does the fact that one of them is a former student of yours raise any flags?

Dean Mitchell, what does it say about your attitude toward female students that you joked to Case faculty members that the Case graduate student you were having an affair with, "wasn't good for anything but keeping the bed warm"?

Dean Mitchell, you have told Case faculty members that you are only permitted to visit your youngest child with supervision. What does this tell us about your fitness to be dean of a law school?

Dean Mitchell, why as a man who doesn't care about legal education and who regards women as objects of exploration dean of the law school?